(18864)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 234.

WILLIAM A. WRIGHT, COMPTROLLER GENERAL, PETITIONER,

vs.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY AND THE ATLANTIC COAST LINE RAILROAD COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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a *Caption.*

UNITED STATES OF AMERICA,
Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun on the first Monday of October, 1902, and held in the court room of said court, in the city of Atlanta, Georgia, before the Honorable Don A. Pardee, the Honorable A. P. McCormick, and the Honorable David D. Shelby, United States circuit judges for the fifth judicial circuit.

WILLIAM A. WRIGHT, Comptroller General, Appellant,
versus
LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL., Appellees. } No. 1156.

Be it remembered that heretofore, to-wit: on the 28th day of April, 1902, a transcript of the record of the above styled cause from the circuit court of the United States for the northern district of Georgia, was filed in the office of the clerk of said United States circuit court of appeals for the fifth circuit in the words and figures following, to-wit:

1 *Bill.*

UNITED STATES OF AMERICA,
Northern District of Georgia.

To the honorable the judges of the circuit court of the United States for the northern district of Georgia:

The Louisville and Nashville Railroad Company, which avers itself to be a corporation created and existing under the laws of the State of Kentucky, and a citizen of the State of Kentucky, with its principal office at the city of Louisville in said State; and The Atlantic Coast Line Railroad Company, a corporation created and existing under the laws of the State of Virginia, and a citizen of the State of Virginia, with its principal office in said State at the city of Petersburg; said parties being hereinafter styled orators, bring this their bill of complaint against William A. Wright, a citizen of the State of Georgia, resident in the northern district thereof, in the city of Atlanta, and against the Georgia Railroad and Banking Company, a corporation created and existing under the laws of the State of Georgia, with its principal office in the city of Augusta in said State. And thereupon your orators complain and say:

1. That the several parties plaintiff and defendant are citizens and residents as hereinbefore stated.

2. That the matter in controversy exceeds, exclusive of interest and costs, the sum or amount of two thousand ($2,000) dollars, and is a controversy between citizens of different States.

3. Your orators show that on the 7th day of May, 1881, the said Georgia Railroad and Banking Company, hereinafter styled the Georgia Company, made and entered into a certain indenture of lease with William M. Wadley, wherein and whereby it leased to him and his assigns for and during the term of ninety-nine (99) years from and after the first day of April, 1881, all of the railroads and rights of transportation of the said Georgia Company, and certain other properties and interests of said Georgia Company; in which said lease the following property and interest was devised, to-wit: all of the rights of ownership, management, control and use of the Western Railroad of Alabama, which the said Georgia Company then had or was entitled to; the same being an undivided one-half (½) ownership in fee simple of the said railroad and franchises of the said Western Railroad of Alabama, which the said Georgia Company had under the authority of an act of the legislature of Georgia, approved the 27th day of February, 1875, acquired; the Central Railroad and Banking Company acquiring and being the owner of the other half interest therein, under and by virtue of the same act.

4. Orators show that under and by the terms of said lease the said lessee or his assigns covenanted to keep the railroads and appurtenances and means of transportation leased, in first-class condition and to indemnify the Georgia Company against any damages, losses or liabilities which might be incurred by reason of the operating of the railroads so leased; and further agreed with the termination of the lease that they would return the property therein rented farmed out and assigned, in as good condition as received, and unimpaired in value, that is to say, as well adapted to the business of transportation as said leased property then was. Said lessee also covenanted and agreed for himself and assigns, that he would pay all taxes which might be payable upon any of said leased property, except such taxes as under the charter of the Georgia Company might be payable upon the rental reserved by the lease, or such part thereof as might be taxable, or as might be collectible by law from the Georgia Company on the shares of its stock in the hands of its shareholders, and that said lessee and his assigns thereby became specially charged with the payment of all taxes upon the half interest of said Georgia Company in the said Western Railroad of Alabama as it then existed or might thereafter exist.

5. Orators show that by the terms of said lease it was agreed that said Western Railroad of Alabama might be by its owners incorporated, and that when so incorporated the shares of stock representing the interest of said Georgia Company in said lease should as to possession, voting and all other matters be governed by the terms of said lease.

6. Orators show that said William M. Wadley went into possession of all the properties demised under said lease, including said

one-half interest of said Georgia Company in said Western Railroad of Alabama, and that shortly thereafter the interest of said William M. Wadley in said lease became vested in your orator The Louisville & Nashville Railroad Company and in the Central Railroad
3 & Banking Company of Georgia, as co-lessees. That, subsequently, by different assignments the entire interest in said lease and the ownership thereof became vested in your orator The Louisville and Nashville Railroad Company, and that your orator the said Louisville and Nashville Railroad Company was accepted by said Georgia Company as the sole lessee of said demised property. That under said lease, among other things it is provided, that securities of the value of one million ($1,000,000) dollars shall be deposited to secure the faithful performance by said lessee of the covenants of said lease as in said lease specified; and that your orator the said Louisville and Nashville Railroad Company after being accepted as such sole lessee made said deposit of said securities, and the same were accepted by the said Georgia Company, and your orators recognized as such sole lessee as aforesaid.

7. Orators show that since said time, to-wit: on or about the first day of July, 1899, your orator, The Atlantic Coast Line Railroad Company acquired from the said Louisville and Nashville Railroad Company by assignment a one-half interest in said lease, and all the rights and privileges thereof, and was accepted by the said Georgia Company as a co-lessee with said Louisville and Nashville Railroad Company; and it and the said Louisville and Nashville Railroad Company are now the co-lessees of said Georgia Railroad and Banking Company under said lease, and are entitled to all the rights, privileges and properties, and subject to all the duties and burdens therein conveyed and thereby specified. A copy of said lease will be to the court shown upon the trial of this cause.

8. Orators show that the said Western Railroad of Alabama extends from the city of West Point, in the State of Georgia, to the city of Selma, in the State of Alabama. That all of said railroad except about one-quarter (¼) of a mile in length lies in the State of Alabama. That such portion of said road as lies within the State of Georgia was built by the express permission of the State of Georgia, and the said railroad was by act of the legislature granted permission to build the same within the limits of this State.

9. Orators show that it and its predecessors in said lease have at all times since the commencement of said lease paid to the State of Georgia and to the State of Alabama, in respect to the several portions of said Western Railroad of Alabama lying, respectively,
4 in each, and in the several counties of each, all taxes which have been assessed thereon and demanded by said States of Alabama and Georgia, respectively, or by the several counties and cities of said States.

10. Orators show that some time durnig the year 1875, the property now known as the Western Railroad of Alabama was purchased at foreclosure sale under and by virtue of the aforesaid act of the legislature of Georgia authorizing them so to do, by the said Georgia

Railroad & Banking Company and the Central Railroad and Banking Company of Georgia, and the said two railroad companies went into possession of the said Western Railroad of Alabama and operated the same for a number of years as tenants in common, without any further or other charter, and without organizing the same as a separate corporation. That said railroad was being so operated at the time the said indenture of lease above mentioned was executed by said Georgia Company to the said William M. Wadley, and that it continued to be so operated by the said Central Railroad and Banking Company of Georgia and by the said Wadley and his assigns for a short period after the execution of said lease. That not long after the execution of said lease, and in accordance with the permission therein accorded the owners of the said Western Railroad of Alabama, viz.: the said Georgia Company and the Central Railroad and Banking Company of Georgia, organized a corporation under the laws of the State of Alabama, known as the Western Railway of Alabama, for the purpose of operating said Western Railroad of Alabama, and issued stock in said corporation as evidence of the ownership of said two railroad companies, to-wit: fifteen thousand (15,000) shares each, or a total capital of three million ($3,000,000) dollars. Said charter was obtained from the State of Alabama, and the same was organized as an organization under the laws of the State of Alabama, and has remained so ever since, owning no property in the State of Georgia except the small portion of railroad hereinbefore set forth—the same being located in the county of Troup in said State.

11. Orators show that while said fifteen thousand (15,000) shares of stock were issued in the name of the Georgia Railroad and Banking Company, the control of said stock and the power to vote the same has been at all times under said lease, and by virtue of the irrevocable powers of attorney executed thereunder, vested in the lessees or their assigns, and that all liability to pay any taxes which may be due or collectible on said shares of stock has been at all times under said lease an obligation of said lessees and assigns, and not of the said Georgia Company.

12. Orators show that while all taxes have been paid which have been required by either the States of Georgia or Alabama, or any county or city thereof, on said Western Railroad of Alabama, no taxes have at any time up to the present year been demanded, either of them or their predecessors under said lease, or of the said Georgia Company, on account of or on said shares of stock, but that the same have been recognized as not being taxable, and as being merely the evidence of the ownership of the said railroad property which said shares of stock represent.

13. But your orators show that within the last few weeks the said W. A. Wright, who is comptroller general of the State of Georgia, acting as such comptroller general, has demanded of the said Georgia Company that it pay taxes to the said State of Georgia for the year 1900; the said taxes amounting to about seven thousand ($7000) dollars or other like large sum, as due to the State of Georgia for

State taxes upon said shares of stock of the Western Railway of Alabama.

* * * * * * *

(Stricken by plaintiff by leave of the court.)

15. Orators show that the said amount of taxation will for the remaining years of said lease amount to a very large sum and constitute a great and additional burden upon your orators as lessees of said property, if the same can be collected.

16. Orators show that said Georgia Company under the terms of the lease between itself and orator is not liable to pay the taxes above demanded, and has no present interest in resisting the same. That the same will not in anywise diminish the revenue which the said Georgia Company will receive, nor in any way deplete the same when received; and orators upon information and belief charge that the said Georgia Company will not resist the payment of said taxes, and that the said Georgia Company is about to return the same to the said comptroller general in its tax returns; and that if the said comptroller general shall issue execution against it for taxes thereon, will not resist the payment of the same, but will suffer the same to be collected out of the property leased by your orators, and your orators will suffer the impairment of their rights under said
6 lease, and their enjoyment of such portion of the leased property as may be seized for the purpose of making the said taxes.

17. That your orators will be without legal remedy to resist the payment of said taxes if so coerced, and will be without remedy unless they are now afforded a remedy by this honorable court in this proceeding.

18. Orators aver that under the laws of the State of Georgia, the said shares of stock are not liable to taxation, and that said comptroller general will be proceeding without law or color of law in attempting to collect the same. But so it is, that the said comptroller general has notified said Georgia Company and your orators that he proposes to issue executions and to proceed forthwith to enforce the payment of said taxes if the same are not voluntarily paid.

19. Your orators show that the attempted collection by the said comptroller general of taxes upon these shares of stock of the Western Railroad of Alabama, and the enforcement of such pretended tax, will take their property without due process of law, and denies to them the equal protection of the laws, in violation of the 14th amendment to the Constitution of the United States, and is therefore illegal and void.

20. Your orators show that said attempt to collect said tax is illegal and void, also:

(*a.*) Because there is no law in the State of Georgia authorizing the taxation of railroad shares of stock in the hands of the owners thereof.

(*b.*) Because under the laws of the State of Georgia, shares of railroad stock are mere representations of the railroad property itself, and such property must be taxed under the laws of the State of

Georgia for the taxation of railroads where located in the State of Georgia, and where not located in the State of Georgia is not subject to be taxed by the State of Georgia.

(c.) Because if taxes were levied upon this stock, the property which it represent- being located in the State of Alabama, the result would be taxation by the State of Georgia of property located in the State of Alabama, which is illegal.

(d.) Because the said State of Georgia doth not tax under its laws railroad shares issued by railroad corporations of the State of Georgia, but recognizes the same as mere certificates of interest in the
7 railroad property which is itself taxed, and there is no law of the State of Georgia creating any other or different rule for railroad shares issued upon properties lying without the State of Georgia.

21. Your orator being remediless under the rules of common law and unable to obtain any relief except in a court of equity, to the end that the several defendants may, if they can, answer the several charges hereinbefore made against them, waive discovery from the said defendants and each of them, and pray:

1st. That it be adjudged that the said shares of stock passing to your orators under said lease are not subject to be taxed by the said State of Georgia.

2nd. That the said Georgia Railroad & Banking Company be enjoined from making any return of said shares of stock for the purpose of taxation, or from paying any taxes thereon, or doing any act or thing recognizing the liability of said shares of stock to be taxed.

3rd. That the said William A. Wright, comptroller general, be enjoined from issuing any execution or taking any step to collect any taxes upon said shares of stock, and that it be further decreed that he is without warrant or authority at law to undertake to collect taxes thereon, and is not authorized as comptroller general so to do.

4th. That your orators may have all other and further relief that their case may require and equity afford.

5th. May it please your honors to grant unto your orators not only the writ of injunction issuing out of this honorable court, and directed to the said defendants, enjoining them as above prayed, but also the writ of subpœna directed to the said Georgia Railroad & Banking Company and the said William A. Wright, as defendants herein, commanding them under a penalty to be therein named and at a date to be therein fixed, to be and appear in this honorable court to answer the premises and abide the further order and decree of the court.

And your orators will ever pray, etc.

JOS. B. & BRYAN CUMMING,
Solicitors for Complainants.

KING & SPALDING, *Of Counsel.*

8 STATE OF GEORGIA, }
Richmond County. }

You, Thomas K. Scott, do swear that you are the general manager for the Louisville and Nashville Railroad Company and the Atlantic Coast Line Railroad Company, as lessees under the lease executed by the Georgia Railroad & Banking Company to William M. Wadley described in the foregoing bill of complaint, and that as such you are the chief executive officer of said lessees in respect to said leased premises and the operations under said lease. That the matters and things in the foregoing bill stated are true of your own knowledge, except where stated upon information and belief, and that these you verily believe to be true.

THOS. K. SCOTT.

Sworn to and subscribed before me this 13th day of August, A. D. 1901.

[SEAL.] GEO. K. CALVIN,
U. S. Commissioner for Southern District of Georgia.

Filed in clerk's office 22nd day of August, 1901.

O. C. FULLER, *Clerk*,
By J. D. STEWARD, *Deputy*.

UNITED STATES OF AMERICA, }
Northern District of Georgia. }

LOUISVILLE AND NASHVILLE RAILROAD CO. and THE ATLANTIC COAST LINE RAILROAD CO., Complainant-,
and
WILLIAM A. WRIGHT and THE GEORGIA RAILROAD & BANKING COMPANY, Defendant-. } In Equity.

The President of the United States to William A. Wright and the Georgia Railroad and Banking Company:

For certain causes offered before the judges of the circuit court of the United States for the northern district of Georgia, in equity, you and each of you, are hereby commanded and strictly enjoined, that, laying all other matters aside, and notwithstanding any other excuse, you personally be and appear at the clerk's office of the said court, in the city of Atlanta, at rules to be had on the first Monday in October (1901) next, to answer to those things which shall then and there be objected to you by the bill of complaint of the Louisville & Nashville Railroad Co., *et al.*, and to do further, and receive what the said court shall have considered in this behalf, and this
9 you may in no wise omit, under penalty of five hundred dollars; and have here this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the

United States, this 22d day of August, in the year of our Lord, one thousand nine hundred and one.

[SEAL.]

O. C. FULLER, *Clerk*,
By J. D. STEWARD,
Deputy Clerk.

MEMORANDUM.—The defendants are required to enter their appearance in the suit above stated, in the clerk's office, on or before the day at which this writ of subpœna is returnable, otherwise the bill may be taken *pro confesso*.

O. C. FULLER, *Clerk*,
By J. D. STEWARD,
Deputy Clerk.

Due and legal service of the within subpœna hereby acknowledged. Copy and further service waived. Copy of bill received. This Aug. 22, 1901.

J. M. TERRELL,
Att'y Gen'l, Of Counsel for W. A. Wright, Comp. Gen'l.
THE GEORGIA RAILROAD AND BANKING COMPANY,
By JACOB PHINZY, *President.*

August 26, 1901.

(Indorsed:) No. 1133, in equity. In the circuit court of the United States, for the northern district of Georgia. October rules, 1901. Louisville & Nashville R. R. and Atlantic Coast Line R. R. Co., complainant-, and William A. Wright and Georgia R. R. & Banking Co., defendant-. Subpœna. Returned into clerk's office, and filed Aug. 30th, 1901. O. C. Fuller, clerk. King & Spalding, complainant's solicitors.

Appearance.

In the Circuit Court of the United States for the Northern District of Georgia.

LOUISVILLE & NASHVILLE R. R. CO. ET AL., Complainants,
vs.
WILLIAM A. WRIGHT ET AL., Respondents.
} In Equity.

To O. C. Fuller, clerk U. S. circuit court:

You will please enter our appearance for respondents in the above stated case.

10 At Atlanta, Ga., this 2nd day of November, 1901.

J. M. TERRELL,
Solicitor for Respondent Wm. A. Wright, Comp. Gen'l.

Entered and filed this 2nd day of Nov. 1901.

O. C. FULLER, *Clerk.*

Answer of William A. Wright, Comptroller General.

In the Circuit Court of the United States for the Northern District of Georgia.

LOUISVILLE & NASHVILLE RAILROAD COMPANY and The Atlantic Coast Line Railroad Company
vs.
WILLIAM A. WRIGHT, Comptroller General, ET AL. } Bill in Equity.

Answer of William A. Wright, comptroller general.

The defendant, William A. Wright, comptroller general, for answer to the bill, or so much thereof as he is advised it is material for him to make answer thereto, saveth:

1. That under the rule of this court allowing matters of demurrer to be set up by way of answer, he avers as reason why the relief prayed for in the above stated case should not be allowed, the following:

(a.) That said complainants have not by their said bill made such a case as entitle them in a court of equity to any relief from or against this defendant touching the matters contained in said bill, or any of such matters.

(b.) That there is no equity in said bill.

(c.) That complainants have full, adequate and complete remedy at common law.

2. In addition to the above stated matters of law as reasons why the relief prayed for should not be granted, this defendant adopts as his answer in this case the averments of fact contained in the agreed statement of facts this day filed in said case, and by reference makes said agreed statement of facts a part of his said answer.

3. Defendant denies so much of the allegation in paragraph 9 of the bill as alleges the payment by the Western Railway of Alabama or the Western Railroad of Alabama of any taxes to the State of Georgia, or any county or city thereof.

BOYKIN WRIGHT,
J. M. TERRELL,
Attorney General,
Of Counsel for Defendant.

Filed in office, this January 2nd, 1902.

O. C. FULLER, *Clerk.*

11 *Opinion.*

In the Circuit Court of the United States for the Northern District of Georgia.

THE LOUISVILLE & NASHVILLE RAILROAD COMPANY and The Atlantic Coast Line Railroad Company
vs.
WILLIAM A. WRIGHT, Comptroller General, ET AL. } No. 1133.

This is a bill filed by the complainants against William A. Wright, comptroller general, to enjoin the latter from collecting from the Georgia Railroad & Banking Company, State taxes on certain shares of stock in the Western Railway of Alabama, complainants being the lessees of the Georgia railroad and liable under the terms of the lease for taxes assessed against it.

The following stipulation has been entered into by the parties in writing and filed with the record in the case:

"In order to obviate the making of proof in the foregoing case it is agreed between the parties as follows:

1. That the citizenship and residence of the several parties plaintiff and defendant are as stated in said bill of complaint, and that the amount in controversy therein involved exceeds the sum of two thousand dollars, exclusive of interest and costs.

2. It is agreed that the Georgia Railroad & Banking Company did on the 7th day of May, 1881, enter into a certain indenture of lease with William M. Wadley and assigns, and that a copy of said lease hereto attached and marked Exhibit "A" shall be taken as a true copy thereof, and shall be used and admitted in evidence in lieu of the original.

3. It is further agreed that subsequently, on February 2nd, 1898, by different assignments, the Louisville & Nashville Railroad Company became the sole assign of said lease, and the lessee of said leased property and interest described therein in lieu of the said Wadley, and was accepted by the Georgia Railroad & Banking Company as such sole lessee, and that it, after being accepted, deposited one million dollars of securities acceptable to the Georgia Railroad & Banking Company, to secure the faithful performance of said lease according to the covenant made in said lease in respect to the making of such deposit.

4. It is further agreed that on or about the — day of —— 1899, the Atlantic Coast Line Railroad Company, acquired from the Louisville & Nashville Railroad Company by assignment, a
12 one-half interest in said lease, and was accepted by the Georgia Railroad & Banking Company as a co-lessee with said Louisville & Nashville Railroad Company, and that the said Louisville & Nashville Railroad Company and the Atlantic Coast Line Railroad Company are now the co-lessees of said lease and hold the same as

fully and to all intents and purposes as the said William M. Wadley did.

5. It is agreed that the Western Railroad of Alabama is a railroad extending from the city of Selma via the city of Montgomery in the State of Alabama, to the city of West Point in the State of Georgia, and that all of said railroad except one-fourth of a mile in length lies in the State of Alabama; that the portion of said road lying in the State of Georgia was built in this State by virtue of an act of the General Assembly of the State of Georgia, passed on the 26th day of December, 1837, incorporating the stockholders of the Montgomery Railroad Company under the name and style of the Montgomery & West Point Railroad Company, within the corporate limits of the town of West Point. That this corporation subsequently became the Western Railroad Company of Alabama, and as such owned said railroad, including the part thereof so built under said act of 1837, in the city of West Point, Georgia. It is agreed that said act is a public law of the State of Georgia, and as such to be taken judicial notice of by the courts, and may be referred to as though herein set out, and is to be found in the published Acts of 1837, pages 201, 202.

6. It is further agreed that all of the property of the Western Railroad Company of Alabama, including the said portion lying in the State of Georgia, was during the year 1875, offered for sale under a foreclosure of mortgage existing thereon, and was sold at judicial sale, and that the said property was purchased by the Georgia Railroad & Banking Company and the Central Railroad & Banking Company of Georgia, two railroad companies of the State of Georgia, under and by virtue of an act of the General Assembly of the State of Georgia, enacted on the 27th day of February, 1875, and entitled "An act to authorize and provide for the purchase of the Western Railroad of Alabama, its property and franchises by the Georgia Railroad & Banking Company and the Central Railroad & Banking Company of Georgia, or either of them, and to authorize said companies to issue bonds in certain cases and to authorize connecting lines to aid in said purchase and issue bonds therefor, and for other purposes," which said act is published in the Acts of the General Assembly of 1875, pages 235 and 236; and it is agreed it is a public law and may be referred to as though herein fully set out.

13 7. It is further agreed that said two last named railroad companies held said Western Railroad & Alabama without incorporating the same, and operated the same as tenants in common until after the making of the said lease hereto exhibited, to William M. Wadley. That on the — day of ——, 188–, a charter was applied for under the general laws of the State of Alabama, and a certificate of such charter was issued by the secretary of state for the State of Alabama, in conformity with such laws incorporating the Western Railway of Alabama, and that to that corporation so incorporated the said Georgia Railroad & Banking Company and the Central Railroad & Banking Company of Georgia conveyed the Western Railroad of Alabama, extending from Selma, Alabama, via

Montgomery, to a connection with the Atlanta & West Point railroad in the city of West Point, Georgia, and that they received from said new corporation its entire capital stock, to-wit: 15,000 shares of one hundred dollars each to the Georgia Railroad & Banking Company, and 15,000 like shares to the Central Railroad & Banking Company of Georgia, or a total capital stock of three million dollars, or 30,000 shares of one hundred dollars each. That said railroad company so incorporated is a corporation of the State of Alabama, and own- no property in the State of Georgia except the small portion of railroad hereinbefore set out which is located in the county of Troup.

8. It is further agreed that the 15,000 shares of stock were issued to, and stand in the name of, the Georgia Railroad & Banking Company, but that an irrevocable power of attorney or proxy to vote the same has at all times been issued and existed under said lease in favor of the lessees or assigns, or such person as they might designate to vote said shares.

9. It is agreed that the blank annually furnished by the comptroller general to the Georgia Railroad & Banking Company to use in making its tax returns contained amongst others the following questions, to-wit: "Number stocks and bonds owned by the company," and "Value of all property not enumerated, and value of tools." That in no other way than in furnishing these blanks did the comptroller general make any demand for taxes upon said shares of stock until about the 25th of May, 1901, when he specifically remanded of the Georgia Railroad & Banking Company that it pay taxes on said shares of stock for the year 1900 to the State of Georgia, which said taxes so demanded amount to between $7000 and $8000. A copy of said blank is attached.

10. It is further agreed that it is provided by the terms of
14 said lease that whatever taxes are collectible from said stock during the entire term of said lease Exhibit "A," are payable by the lessees thereunder, or if the same are lawfully collected from said Georgia Railroad & Banking Company, that said lessees are liable to reimburse the same to said Georgia Railroad & Banking Company, without in any way diminishing the rental which is payable by said lessees under said lease.

11. It is further agreed that stockholders in the Atlanta & West Point Railroad Company, the Georgia Railroad & Banking Company, the Augusta & Savannah Railroad Company, and of all corporations which pay taxes upon their property to the State of Georgia, do not return their shares of stock for taxation.

12. It is further agreed that the Code of Alabama shall be admitted without proof.

The foregoing statement of facts, signed by counsel for the respective parties, sufficiently shows all the facts pertinent to the question involved here, which is, whether shares of stock in the Western Railway of Alabama, an Alabama corporation held by the Georgia Railroad & Banking Company, a Georgia corporation, are taxable as property of the latter, by the State of Georgia.

One additional fact may be mentioned. It is alleged in the bill and not denied in the answer, or negatived in any way in the agreed statement of facts, that the Western Railway of Alabama has paid all State and county taxes required of it in the State of Alabama.

It may be conceded first, as a general proposition, that the State has the power to treat shares in a corporation as distinct and separate property in the hands of the holders, should it desire to do so, for purposes of taxation; and further, if suitable legislation is enacted, it may carry out this purpose. This is supported by abundant authority, and is not questioned, as I understand, by counsel for the complainants in this case. Cook on Stock and Stockholders, sec. 563; Tennessee *v.* Whitworth, 117 U. S. 129.

Conceding this to be true, however, the real contention of counsel for complainants here is that the State of Georgia has not adopted this policy, and that the action of the comptroller general in attempting to tax these shares is without authority of law.

In endeavoring to ascertain what the law of Georgia is on this subject it may be remarked first, that there is no express legislation contained in the body of statute laws of this State either in the code or subsequent to its adoption, which authorizes the collection 15 of this tax. Reference will be made, hereafter to what is contained in the tax act adopted by the legislature of Georgia in 1898, levying taxes for the years 1899 and 1900, under which act the authority to collect the taxes in question here is claimed.

It being true that there is no such express legislation, *and* it will be important to ascertain what the rule or policy of the State otherwise has been, and this seems to be stated in a decision by the supreme court of the State in the case of Wright, comptroller general *v.* Southwestern Railroad Co., 64 Ga. 783. In the opinion in that case by Jackson, justice, it is said, with reference to an effort of the State to tax the Southwestern Railroad Company, that,

"Stock in the company's own road, held by itself, or in other roads in this State, whose charters limit or exempt taxation thereon, and whose income is taxed, is not liable; and stock held by the company in railroads without the limits of this State is not taxable here. Stock in a railroad is really but so many shares of its property, and that property is real estate, for the most part at least, and taxable by the State in which the road is located."

What the court meant to say in the foregoing paragraph is emphasized by the immediately succeeding language, as follows: "But bonds, notes, and all other mere evidences of debt, follow the situs of the creditor, no matter where the debtor lives."

It is said that what has been quoted is a mere dictum and should not be regarded as authority. There does not appear to be good reason for this claim. The question must have been directly involved or there would have been no reason whatever for the court to express any opinion on the subject. There must have been an effort on the part of the comptroller general to tax, as a part of the property of the Southwestern Railroad Company, shares held by it in

railroads without the limits of the State, in order to have justified any reference to the matter.

It is also — that this was a decision on an appeal from the grant of an injunction *pendente lite*, and was not a final decision in the case. In the concluding paragraph of the opinion this is said:

"The judgment granting the writ of injunction until the hearing is therefore affirmed, and it is ordered that on the hearing the case be tried on its merits, and that such issues be made as shall bring out the whole truth on the facts, and the law as indicated above be applied to those facts, subject to be modified by the chancellor as facts other than those in this record may require."

16 It is evident from this that the supreme court was stating the law of the case, and that the duty of the court below was to apply that law, as thus announced, to the facts, which facts, it is indicated, might be subject to modification. No suggestion was made that there might be any change in the law as stated by the court.

It is claimed, however, that the decision above referred to was made under the constitution of 1868, and that according to the decision of the supreme court of the State in Atlanta National Building & Loan Ass'n *et al. v.* Stewart, tax collector, 109 Ga. 80, a distinction is drawn in the rule as to taxation under the constitution of 1868, and that under the constitution of 1877. The first two head notes of that case are as follows:

"1. The constitution of 1868 provides that 'taxation on property shall be ad valorem only, and uniform on all species of property taxed.' As long as that constitution was in force the General Assembly had power to exempt one species of property and tax another, and this exemption could be either express or result from a failure to provide that a given species of property should be taxed.

"2. The constitution of 1877 provides that 'all taxation shall be uniform upon the same class of subjects and ad valorem on all property subject to *the* taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.' Under this constitution the General Assembly can not lawfully either expressly exempt from taxation, or accomplish this result by a failure to tax, any property except that which in the constitution itself the General Assembly is expressly authorized to exempt."

What is thus stated in the head notes, and more elaborately in the opinion, is beside the exact question involved here, which is, whether the State, for purposes of taxation, treats the shares in a railroad corporation as property distinct and separate from that of the corporation which it represents. Unquestionably the effect of the decision of the supreme court of the State in Wright, comptroller general *v.* Southwestern R. R. Co., *supra.*, is that the State does not so regard shares of stock in railroad corporations located without the State. It holds that "stock in a railroad is really but so many shares of its property, and that property is real estate, for the most part at least, and taxable by the State in which the road is located."

Neither do I understand the 14th head note to the opinion in Building & Loan Ass'n *v.* Stewart to be important, or in any way controlling in this case. It is as follows:

17 "The General Assembly has power to levy a tax upon the shares of stock of an incorporated company as the property of the shareholders, and also a tax upon the property of the corporation."

The power, as has been stated, may be conceded; the question is whether the State has exercised it. The following language from the opinion will throw some light upon what in this respect, was really determined:

"Possibly it may be competent to provide against taxing the shares of stock where all the property which gives them value has been taxed. I do not decide as to this because it is not before me directly. But in this case, the act provides in terms, not for relieving shareholders against what might be claimed to be double taxation, if the company had paid on everything conferring value on the shares; but on the contrary, it provides for the company to pay only on the market value, not of its property, but of shares belonging to certain of its stockholders on which no loans have been made. It is exactly a reverse proceeding. Suppose it be true that, if all the property which gives shares of stock a valuation has been paid upon, it is equivalent to paying on the shares and the owners need not pay again, or at least that the legislature may provide that they need not pay again, the provision of this act is that if the company will pay on the market value of the shares of some of its stockholders, it need not pay on any of its property."

There is nothing whatever in this decision to the effect that the State treats shares of stock in corporations as separate and distinct from that of the corporations for purposes of taxation, when the corporation itself is taxed on the property which the shares represent.

It is claimed, however, that the act of the legislature of Georgia levying taxes for the years 1899 and 1900, (Acts of 1898, p. 21), by its provisions authorizes and requires the collection of the taxes on the shares in question.

In the 16th section of this tax act it is provided that,

"In addition to the questions now propounded to taxpayers by the tax receivers, questions shall be framed by the comptroller general to reach all property upon which a tax is imposed by this act, and especially the following questions."

The 30th question is as follows:

"How many shares of stock did you own on the day fixed for the return of property for taxation issued by corporations located without the State?"

"31st. What was the gross nominal value thereof?"

"32nd. What was the fair market value thereof?"

18 "33rd. How many shares of stock did you own, on the day fixed for the return of property for taxation, issued by corpo-

rations within the State, the capital stock of which or the property of which is not returned by such corporation for taxation ?"

"34th. What was the gross par value thereof?"

"35th. What was the fair market value thereof?"

Are these questions in effect such an express legislative enactment as directs a tax levy on shares of the character in question? There should be a reasonably clear expression of legislative intent. Indeed if this is to be construed as double taxation, the legislative intent should be unmistakable. In Tennessee *v.* Whitworth, 117 U. S. 129, in the opinion by Mr. Chief Justice Waite, it is said:

"In corporations four elements of taxable value are sometimes found: 1, franchises; 2, capital stock in the hands of the corporation; 3, corporate property; and 4, shares of the capital stock in the hands of the individual stockholders. Each of these is, under some circumstances, an appropriate subject of taxation; and it is no doubt within the power of a State, when not restrained by constitutional limitations, to assess taxes upon them in a way to subject the corporation or the stockholders to double taxation. Double taxation is, however, never to be presumed. Justice requires that the burdens of government shall as far as is practicable be laid equally on all, and, if property is taxed once in one way, it would ordinarily be wrong to tax it again in another way, when the burden of both taxes falls on the same person. Sometimes tax laws have that effect; but if they do it is because the legislature has unmistakably (*unmistakably*) so enacted. All presumptions are against such an imposition.

See also Desty on Taxation, p. 199 (sec. 39); Cool-y on Taxation, p. 165.

But whether this be strictly double taxation or not, as it is levied by different States, still there should certainly be a clear legislative expression that railroad shares are property for taxation in Georgia, in view of the distinct utterance by the Supreme Court to the contrary in Wright *vs.* Southwestern R. R. Co., *supra.*

It is admitted by the comptroller-general in the agreed statement of facts in this case, that "stockholders in the Atlanta & West Point Railroad Company, the Georgia Railroad & Banking Company, the Augusta & Savannah Railroad Company and all corporations which pay taxes upon their property to the State of Georgia, do not return their shares of stock for taxation."

19 Shares of stock owned by citizens of Georgia, in railroads within the State of Georgia, can certainly with as much justice be classed as separate and distinct property in the hands of the holders of such shares, as can the shares in railroad corporations without the State of George. It would seem that if the doctrine in the case of Building & Loan Ass'n *vs.* Stewart, *supra*, is to be applied as contended for, that it would necessarily embrace shares in domestic corporations, as well as shares in foreign corporations. If both are property, then under the construction of the constitution of 1877 announced in that case, both are subject to taxation, neither being expressly exempted by the constitution; and yet it is conceded by

counsel for the comptroller-general that the State has not attempted to tax shares in domestic corporations and that it would be wrong for it to do so.

Under the Georgia law, where the tax is sought to be collected without legal authority, an injunction is the proper remedy. Wright, comptroller-general, *vs.* Southwestern R. R. Co., 64 Ga. 783–801; S. F. & W. R. Co. *vs.* Morton, 71 Ga. 24–30; Wright, comptroller-general, *vs.* R. R. Co., 85 Ga. 649–650; Sheibley *vs.* Rome, 107 Ga. 384.

The same relief may be granted in the United States court as in a State court, if the citizenship is proper.

A part of the agreed statement of facts in this case is as follows: "It is further agreed that it is provided by the terms of said lease that whatever taxes are collectable from said stock during the entire term of said lease, Exhibit "A," are payable by the lessees thereunder, or if the same are lawfully collected from said Georgia Railroad & Banking Company that said lessees are liable to reimburse the same to said Georgia Railroad & Banking Company without in any way diminishing the rental which is payable by said lessees under said lease."

Under the facts stated, a case is made for equitable relief, and complainants are entitled to a decree as prayed.

This April 7th, 1902.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office, 7 day of Ap'l, 1902.

O. C. FULLER, *Clerk*,
By J. D. STEWARD, *Deputy.*

20 *Final Decree.*

In the Circuit Court of the United States for the Northern District of Georgia.

THE LOUISVILLE & NASHVILLE RAILROAD Company and Atlantic Coast Line Company
vs.
WILLIAM A. WRIGHT, Comptroller General, *et al.*
} No. 1133. In Equity.

This case having been submitted upon the pleadings therein and agreed statement of facts, and now coming on for final decree:

It is thereupon considered, ordered and decreed by the court that the facts in said case are, and are hereby adjudged to be as the same are set out and found in the opinion of the court filed in this case on the 7th day of April, 1902.

It is further considered, ordered and adjudged that under the laws

of the State of Georgia and the decisions of its courts, shares of railroad stock are mere representations of the railroad property itself, and that stock held by a railroad company in railroads without the limits of this State is not taxable in the State of Georgia.

It is further ordered and adjudged that the said William A. Wright, comptroller general, is without any authority of law to undertake to collect taxes upon said shares of stock, and is not authorized as comptroller general so to do, and he is hereby perpetually enjoined from issuing any execution or taking any steps to collect said taxes upon said shares of stock, and that the said Georgia Railroad & Banking Company is enjoined from making any return of said shares of stock for the purposes of taxation, or from paying any taxes thereon, or doing any act or thing recognizing liability of said shares of stock to be taxed.

In open court this 16th day of April, A. D. 1902.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office April 16, 1902.

O. C. FULLER, *Clerk.*

21 *Notice to Join in Appeal.*

In the Circuit Court of the United States for the Northern District of Georgia.

THE LOUISVILLE & NASHVILLE RAILROAD Company and The Atlantic Coast Line Railroad Company
vs.
WILLIAM A. WRIGHT, Comptroller General; Georgia Railroad & Banking Company.
} No. 1133. In Equity.

Bill for injunction.

To the Georgia Railroad & Banking Company:

A decree having been entered in the above stated case against the defendants and William A. Wright, comptroller general, one of the defendants desiring to appeal to the circuit court of appeals, you as a co-defendant therein are hereby respectfully notified to appear and join in the appeal.

Very respectfully,

J. M. TERRELL,
BOYKIN WRIGHT,
Solicitors for William A. Wright, Comp. Gen.

Due and legal service of above notice in writing acknowledged and this defendant hereby refuses to join in said appeal, being content with the decree rendered in said cause.

THE GEORGIA RAILROAD & B'K'G CO.,
By JACOB PHINIZY, *Pres.*

It appearing to the court that the Ga. R. & Banking Company refuses to join in said appeal: Ordered that defendant, W. A. Wright, comptroller gen'l, be permitted and he is hereby allowed to make said appeal alone.

This Ap'l 23, '02.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office 23 day of Ap'l, 1902.

O. C. FULLER, *Clerk*,
By J. D. STEWARD, *Deputy.*

22 *Stipulation of Counsel.*

In the Circuit Court of the United States for the Northern District of Georgia.

LOUISVILLE & NASHVILLE RAILROAD COMPANY and ATLANTIC COAST LINE RAILROAD COMPANY *vs.* WILLIAM A. WRIGHT, Comptroller General, *et al.*	No. 1133. In Equity.

It is stipulated by counsel for the several parties in the above stated cause that, whereas, the agreed statement of facts entered into therein is fully set out in the opinion of the court filed in said cause, in making up the record in said cause on appeal in the circuit court of appeals, the clerk need not copy said agreed statement of facts, but the same as set out in the opinion of the court shall be taken for such agreed statement of facts and referred to as such.

This April 23rd, 1902.

BOYKIN WRIGHT,
J. M. TERRELL,
Solicitors for Wright, Comptroller Gen'l, Appellant.
JOS. B. & BRYAN CUMMONG,
KING & SPALDING,
Solicitors for Complainants, Appellees.

Filed in clerk's office 23 day of Ap'l, 1902.

O. C. FULLER, *Clerk*,
By J. D. STEWARD, *Deputy.*

"A."

Lease.

The Georgia Railroad and Banking Company
to
William M. Wadley.

GEORGIA:

This indenture, made this seventh day of May, anno Domini, one thousand eight hundred and eighty-one, between The Georgia Railroad and Banking Company, a corporation under the laws of said State, party of the first part, and Wm. M. Wadley, of Monroe county, in said State, party of the second part, witnesseth: That the party of the first part, in conformity with the provisions of its charter, and acting in this behalf in pursuance of a resolution of its board
23 of directors, regularly convened the twelfth day of April in the year one thousand eight hundred and eighty-one, for and in consideration of the covenants, conditions and agreements hereinafter set forth on the part of said party of the second part:

Hath rented and farmed out to said party of the second part and his assigns, and does by these presents rent and farm out to said party of the second part and his assigns, for the full term of ninety-nine years from the first day of April, one thousand eight hundred and eighty-one.

All its privileges, general and exclusive, of transporting persons, merchandise, produce and every kind of property whatsoever which is or may become the subject of railroad transportation, over the lines of railroad owned or controlled by the party of the first part, to the full extent that the party of the first part has or enjoys, or is now entitled to have or enjoy, or may hereafter acquire the right to have and enjoy such privileges, and subject to all the obligations and duties, imposed by its charter in this behalf upon the party of the first part.

And the party of the first part has also rented and farmed out, and does by these presents rent and farm out to the party of the second part for the aforesaid term of ninety-nine years, as the means of the full enjoyment of the privileges hereinbefore rented and farmed out, the following property, to-wit:

The Georgia railroad from Augusta to Atlanta, and its branches, viz: The branch from Barnett to Washington; the branch from Camak to Warrenton, and the branch from Union Point to Athens, with all the extensions thereof which may be made hereafter to other points;

Also, the Macon and Augusta railroad, from Warrenton to Macon;

Together with the rights of ways, road-beds, depots, stations, warehouses, elevators, work shops, wells, cisterns, water tanks, and other appurtenances of said railroad and branches.

And the party of the first part also hereby assigns to the party of the second part, so far as it can lawfully do so, any right it may have to extend any of said railroads or branches.

And the party of the first part also assigns to the party of the second part and his assigns, all its rights, claims, interest and demand, in, to and upon the Walton railroad, so that the party of the second part may have the same right touching the bonds of the
24 Walton Railroad Company that he has by virtue of these presents in reference to the bonds of the Augusta and Port Royal railway, as hereinafter provided.

And the party of the first part also assigns by these presents to the party of the second part and his assigns, all the rights of ownership, management, control and use of the Western Railroad of Alabama, which the party of the first part now has or is entitled to; provided, that when either branch of the Western Railroad of Alabama from Opelika into Georgia shall be sold, one-half of the proceeds of the sales shall be received by the party of the first part.

But in consideration that the party of the second part and his assigns will thereby lose the free use of the property of the party of the first part in the branch so sold, the party of the first part will in that event pay to the party of the second part and his assigns interest on said half of the proceeds at the same rate that the then bonds of the Western Railroad of Alabama, or its successor, may bear at the date of payment of the interest of said bonds. That is to say, if said bond- shall bear eight per cent. interest, that rate of interest shall be paid on one-half of the proceeds, and if said bonds bear six per cent. interest, then that rate of interest shall be paid on one-half the proceeds, and so from time to time.

The party of the first part also agrees to assign and transfer to the party of the second part and his assigns, for and during said term of ninety-nine years, the income of the stock now held by the party of the first part in the Atlanta and West Point Railroad Company, to-wit: four thousand four hundred and nine shares; and in the Rome Railroad Company, to-wit: fourteen hundred and eighty-nine shares and three-eighths of a share;

Also, to give to the party of the second part and his assigns an irrevocable power of attorney to vote said stocks, with the restrictions hereinafter indicated, as fully as party of the first part might vote them if this agreement had not been made;

Also, to assign and transfer to said party of the second part and his assigns, for and during said term of ninety-nine years, the income of the stock and the bonds held by the party of the first part in the Port Royal and Augusta Railway Company, and to give to the party of the second part and his assigns an irrevocable power of attorney to vote said stocks and bonds, with the restriction hereinafter indicated, as fully as the party of the first part could vote them if this agreement had not been made.

But this provision is not to include the claim of the party
25 of the first part on the Compress Company of Port Royal, its compress, elevator, and other property of said Compress Company.

And if the said bonds of the Port Royal and Augusta Railway Company should be collected at any time by the party of the first part, then the party of the first part will pay to the party of the second part and his assigns interest on said collections for and during the unexpired period of said term of ninety-nine years, at the then current legal rate of interest of the State of Georgia, not exceeding six per cent. per annum.

The party of the first part also agrees to deliver to the party of the second part and his assigns all steel rails which have been contracted for by the party of the first part, at the expense of the party of the first part.

The party of the first part also agrees to pay the principal and interest of the bonds of the party of the first part, and of the Macon and Augusta Railroad Company; provided, that nothing herein contained shall be construed as impairing or in any way affecting the right of the party of the first part to renew any of said bonds.

And the party of the first part also agrees to pay the taxes, which may be payable under the charter of the party of the first part, on the rental hereinafter stipulated, or on so much thereof as may be taxable, and all taxes, if any, which may become by law collectible from the party of the first part on the shares of its stock in the hands of its shareholders. But all other taxes, which, may be payable on the property and franchises, which or the control, use or enjoyment of which is hereby rented, farmed out, assigned or transferred to the party of the second part and his assigns, shall be paid by the party of the second part and his assigns.

This indenture is not to affect the ownership, use or enjoyment of the party of the first part, as to all the cash, notes, claims, demands, rights and credits, owned by the party of the first part on the first day of April, eighteen hundred and eighty-one.

The banking house, banking privileges and banking business of the party of the first part are no wise affected by this indenture.

The lands, houses, and tenements belonging to the party of the first part, other than its elevator and appurtenances in the city of Augusta, not necessary or used for railroad purposes, are not affected by this indenture, and contracts relating to such houses, lands and tenements made before the date of the presents, although not yet executed, shall not be affected by this agreement, but may be carried out by the party of the first part.

26 All contracts now existing between the party of the first part and other railroad companies, except as otherwise and hereinbefore provided, shall be carried out by the party of the second part and his assigns; provided, that the party of the second part and his assigns shall have the same right to modify, change or abrogate said contracts, which the party of the first part now has.

In consideration of the things hereinbefore agreed to be done by the party of the first part, the party of the second part hereby covenants for himself and his assigns to pay to the party of the first part the sum of six hundred thousand dollars annually, for the full term of ninety-nine years, in two semi-annual payments of three

hundred thousand dollars each, the first of said semi-annual payments to be made on the first day of October, eighteen hundred and eighty-one, and the others on the first days of April and October thereafter, and said payments to be made in such money as is legal tender of the United States at the times of such payment.

The party of the second part also covenants for himself and his assigns to return the property hereinbefore rented, farmed out and assigned to the party of the second part in as good condition as it is now in, and unimpaired in value, that is to say, the railroads and their appurtenances as well adapted to the business of transportation as they now are, and the personal property in personal property equal in value and as well adapted to its uses as it now is. And all the property substituted for and added to that which is hereby rented and farmed out, shall be the property of the party of the first part, to the same extent as the original property, for which it may be substituted, or to which it may be added, was the property of the party of the first part.

And the party of the second part also covenants for himself and his assigns, to keep the railroads and their appurtenances and the means of transportation in first-class condition of such property, and also to indemnify the party of the first part against any damages, losses or liabilities, which may be incurred by reason of the operating of the railroads, the use and control of which are hereby granted and farmed out.

The party of the second part also covenants for himself and his assigns that he and they will pay the interest demandable of the party of the first part on the bonded debt of the Western Railroad of Alabama, so that said indebtedness shall never be increased; and at the termination for any cause of this agreement, to return the property, which the party of the first part has in said railroad, without any greater encumbrance thereon than it now bears.

27 But the party of the first part will consent to the organization of the owners of the Western Railroad of Alabama into a corporation, and to the issue by said corporation of bonds to renew bonds maturing from time to time, for which the said Railroad of Alabama is liable, which said bonds the party of the first part hereby agrees to endorse or guarantee to the same extent that it is now bound for the bonds of the Western Railroad of Alabama; provided, that said incorporation shall not impair the beneficial ownership of said railroad by the party of the first part; and,

Provided further, that the aggregated amount of bonded indebtedness of said railroad and the rate of interest thereon shall not be increased to an amount and rate exceeding the present amount of bonds and present rate of interest.

The party of the second part also covenants for himself and his assigns, that the privileges of free passage to the stockholders and directors of the Georgia Railroad and Banking Company shall be continued to the same extent as they are now enjoyed by stockholders and directors respectively, according to the present usages of said company.

The party of the second part also covenants for himself and his assist in encumbering, or permit to be encumbered, the property or assigns that he and they shall have no power to encumber, or to stocks passing into the control of the party of the second part by virtue of this indenture to the full extent that the said party has control, except the Western Railroad of Alabama, as hereinbefore provided, and that he and they will not for such purpose vote any of the stocks or bonds of the corporations the power of voting which is hereby given, and that the irrevocable powers of attorney hereinbefore stipulated to be given may be restricted on their face in this respect.

The party of the second part also covenants for himself and his assigns that the party of the first part shall have the right to enter upon and inspect the railroads hereinbefore mentioned, and appurtenances, including the rolling stock used on the same, by persons selected by the party of the first part, as often as the party of the first part may think proper.

The party of the first part reserves the right, in addition to all other remedies now usual or hereinafter to become usual in the law, to enter upon and resume possession and enjoyment of all its property for the breach of any of the covenants or agreements of this indenture.

At the termination for any cause of this lease, all necessary and proper betterments which shall have been made by the party
28 of the second part or his assigns, shall be paid for at their then fair value by the party of the first part.

Provided always, that nothing herein contained shall be construed as giving or attempting to give to the party of the second part or his assigns the right to do or omit any act or thing, the doing or omission of which would furnish a ground for forfeiture of the charter of the party of the first part, and all such acts and omissions are hereby declared to be contrary to the terms and spirit of this indenture, and void.

In order to guarantee the performance of the agreements and covenants hereinbefore made by the party of the second part, said party of the second part further covenants for himself and his assigns to deposit in such place and in such manner as the president of the party of the first part may designate, one million dollars in bonds of the United States or in other bonds of equal value—said deposit to be kept up to the clear market value of one million dollars; provided, the party of the second part and his assigns shall have the privilege of collecting for his or their own benefit the income of said bonds and of changing the kind of bonds from time to time, and of substituting for bonds other and different security; provided, such other and different security be first approved by the party of the first part.

And the party of the second part also covenants for himself and his assigns that his and their legal rights and privileges under this indenture shall be so preserved by him that the deposit of one million dollars of security for the due and faithful performance of

FOLD OUT IS TOO LARGE TO BE FILMED

TAX RETURN

—OF—

the terms and conditions of this indenture shall remain and continue so subject during the entire term of the lease without impediment or embarrassment growing out of distribution, or want of representation of the *state* of the party of the second part or of any of his assigns; and that it is the true intent and meaning of these presents that said deposit of security shall at all times remain as a guaranty for the covenants of this indenture, and liable to any proceedings at law or in equity to enforce the rights of the party of the first part without let, hindrance of delay on account of the death of the party of the second part, or any of his assigns, testate or intestate, and that death of the party of the second part or any of his assigns, testate or intestate, and the failure of legal representation of his or their estate for any period whatsoever, shall be no excuse for the non-performance of any of the covenants or agreements of the party of the second part.

It is agreed that within sixty days from the date of these presents, a full and complete inventory of all the property delivered
29 under this agreement, showing its character, condition and value, shall be made by two disinterested experts and annexed to this indenture as a part thereof—said inventory to be made at the joint expense of the parties of the first and second parts.

In witness whereof, the party of the first part has caused its president to sign these presents and its corporate seal to be affixed hereunto, and the party of the second part has hereunto set his hand and seal the day and year first above written.

In duplicate.

THE GEORGIA R. R. & BANKING CO.,
[CORPORATE SEAL.]
By C. H. PHINIZY, *President.*
WM. M. WADLEY. [L. S.]

Signed, sealed and delivered in the presence of:

A. R. LAWTON.
JOS. B. CUMMING.
HENRY C. GOODRICH,
Notary Public, Richmond County, Ga.

GEORGIA,
Richmond County,

Recorded in clerk's office, superior court of said county, Book KKK, folios 711, 712, 713, 714, 715, and 716, May 26th, 1881.

WM. E. KEENER,
Deputy Clerk Superior Court, Richmond Co., Ga.

30 ("Annual return for taxation," in blank.)

31 *Petition for Appeal.*

In the Circuit Court of the United States for the Northern District of Georgia.

THE LOUISVILLE & NASHVILLE RAILROAD Co. and The Atlantic Coast Line Railroad Co.
vs.
WILLIAM A. WRIGHT, Comptroller-General.
} In Equity. No. 1133.

Bill for injunction.

The above named defendant, William A. Wright, comptroller-general, conceiving himself aggrieved by the decree made and entered on April 16th, 1902, in the above entitled case, does hereby appeal from said order and decree to the United States circuit court of appeals, for the fifth circuit, at New Orleans, for the reasons specified in the assignment of errors, which is filed herewith, and prays that his appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States circuit court of appeals for the fifth circuit, at New Orleans.

J. M. TERRELL &
BOYKIN WRIGHT,
Solicitors for Appellants.

Dated 17th Ap'l, 1902.

The foregoing claim of appeal is allowed.

WM. T. NEWMAN, *U. S. Judge.*

Dated April 17th, 1902.

Filed in clerk's office Apr. 21, 1902.

O. C. FULLER, *Clerk.*

32 *Assignment of Errors.*

In the Circuit Court of the United States for the Northern District of Georgia.

THE LOUISVILLE & NASHVILLE RAILROAD Company and The Atlantic Coast Line Railroad Company
vs.
WILLIAM A. WRIGHT, Comptroller-General, Georgia Railroad & Banking Company.
} In Equity. No. 1133.

Assignment of errors on appeal.

And now on the 17th day of April, 1902, comes William A. Wright, comptroller-general, by Joseph M. Terrell and Boykin Wright, his solicitors, who appeal from the decree in the above stated cause entered April 16th, 1902, and with his appeal this day allowed, file the following assignment of errors, to-wit:

First. That the court erred in not sustaining defendants' demurrer to the bill, set up by way of answer, and dismissing the said bill, because

(*a.*) The complainants did not make such a case as entitled them in a court of equity to any relief from or against the defendants touching the matters contained in said bill, or any of such matters.

(*b.*) Because there was no equity in said bill.

(*c.*) Because complainants had no such interest in the matters complained of as to entitle them to maintain said bill, and to entitle them to relief by injunction.

Second. Because the court erred in granting the injunction against William A. Wright, comptroller-general, perpetually enjoining him from issuing any execution or taking any steps to collect taxes upon the shares of stock in the Western Railway of Alabama held by the Georgia Railroad & Banking Company in the State of Georgia.

Third. Because the court erred in granting the injunction against the Georgia Railroad & Banking Company, enjoining it from making any return of the shares of stock of the Western Railway of Alabama held by it, in the State of Georgia, for the purposes of taxation, or from paying any taxes thereon, or doing any act or thing recognizing the liability of said shares of stock to be taxed in the State of Georgia.

Fourth. Because the court erred in holding and decreeing, under the facts and circumstances of the case, that "under the laws of the State of Georgia, and the decisions of its courts, shares of
33 railroad stock are mere representations of the railroad property itself, and that stock held by a railroad company in railroads without the limits of this State is not taxable in the State of Georgia," and in not holding and decreeing to the contrary.

Fifth. Because the court erred, under the facts and circumstances of the case, in holding and decreeing "that the said William A. Wright, comptroller-general, is without any authority of law to undertake to collect taxes upon said shares of stock, and is not authorized as comptroller-general so to do," and in not holding and decreeing to the contrary.

Wherefore, the said William A. Wright prays that the said decree be reversed, and that the said court be directed to enter a decree dissolving said injunction.

J. M. TERRELL &
BOYKIN WRIGHT,
Solicitors for Appellants.

Let this assignment of errors be filed with the appeal above allowed. This 17 day of April, 1902.

WM. T. NEWMAN,
U. S. Judge.

Filed in clerk's office Apr. 21, 1902.

O. C. FULLER, *Clerk.*

Bond.

Know all men by these presents, that we, William A. Wright, as principal, and Philip Cook, as surety, are held and firmly bound unto the Louisville & Nashville Railroad Company and the Atlantic Coast Line Railroad Company in the full and just sum of two hundred and fifty dollars to be paid to the said companies, their certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 21st day of April, in the year of our Lord one thousand nine hundred and two.

Whereas, lately at a circuit court of the United States, for the northern district of Georgia, in a suit depending in said court between The Louisville & Nashville Railroad Company and The Atlantic Coast Line Railroad Company, complainants, and
34 William A. Wright, defendant, a decree was rendered against the said William A. Wright and the said William A. Wright having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Louisville & Nashville Railroad Company and the Atlantic Coast Line Railroad Company citing and admonishing them to be and appear before the United States court of appeals for the fifth circuit, to be holden at New Orleans, Louisiana, within 30 days from the date thereof.

Now, the condition of the above obligation is such, that if the said William A. Wright shall prosecute said appeal to effect, and answer

all damages and cost, if he fail to make the said plea good, then the above obligation to be void; else to remain in full force and virtue.

WILLIAM A. WRIGHT. [SEAL.]
PHILIP COOK. [SEAL.]

Sealed and delivered in the presence of:
J. D. MASSEY,
[SEAL.] *Notary Public, Fulton Co., Ga.*

Approved by
WM. T. NEWMAN,
U. S. Judge.

UNITED STATES OF AMERICA,
Northern District of Georgia.

I, Philip Cook, security on the within bond, being duly sworn, deposes and says that he is worth the sum of $2,000.00 over and above his just debts and liabilities and exemptions under the homestead and exemption laws of the State of Georgia.

PHILIP COOK.

Sworn to and subscribed before me this 21st day of April, 1902.
J. D. MASSEY,
Notary Public, Fulton Co., Ga.

Filed in clerk's office April 21st, 1902.
O. C. FULLER, *Clerk.*

35 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Louisville & Nashville Railroad Company and the Atlantic Coast Line Railroad Company, Greeting:

You are hereby cited and admonished to be and appear before the United States circuit court of appeals for the fifth circuit, at New Orleans, Louisiana, within 30 days from the date hereof, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the western district of Georgia, wherein William A. Wright is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 17th day of April, in the year of our Lord one thousand nine hundred and two.

WM. T. NEWMAN,
U. S. Judge.

We hereby this 19th day of April, 1902, accept due personal service of this citation on behalf of The Louisville & Nashville Railroad Company and The Atlantic Coast Line Railroad Company, appellees.

JOS. B. & BRYAN CUMMING,
KING & SPALDING,
Solicitors for Complainants.

The Georgia Railroad & Banking Company, one of the defendants in the above stated case, having been notified and requested in writing, by its co-defendant, William A. Wright, comptroller general, to join in the appeal to the circuit court of appeals, which the said Wright has petitioned for, and refusing to do so, being content with said decree, does hereby acknowledge due and legal service of a copy of the within citation, and waives all further service or notice in said appeal.

April 19th, 1902.

THE GEORGIA RAILROAD & B'K'G CO.,
By JACOB PHINIZY, *Pres.*

Filed in clerk's office Apr. 21, 1902.

O. C. FULLER, *Clerk.*

36 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Fifth Judicial Circuit, Northern District of Georgia.

I, O. C. Fuller, clerk of the circuit court of the United States for the northern district of Georgia, do hereby certify that the foregoing and attached 45 pages of printing and writing contain a true copy of the record as stipulated by counsel, assignments of errors and all proceedings in the case wherein The Louisville and Nashville Railroad Company and The Atlantic Coast Line Railroad Company were complainants, and William A. Wright, comptroller general of the State of Georgia and The Georgia Railroad and Banking Company were defendants, as the same appear of record and on file in the clerk's office of the said court.

In testimony whereof, I hereunto set my hand and the seal of the said court, at Atlanta, Ga., this the 25th day of April, 1902.

[SEAL.]

O. C. FULLER,
Clerk Circuit Court of the United States for the Northern District of Georgia.

37 United States Circuit Court of Appeals, Fifth Circuit, November Term, 1901, May 26, 1902.

(Extract from Minutes.)

WILLIAM A. WRIGHT, Comptroller General,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY. } No. 1156.

This cause was regularly called this day and submitted to the court after argument by Mr. Boykin Wright and Mr. J. M. Terrell for appellant, and by Mr. Jos. B. Cumming and Mr. Alex. C. King for appellee.

October Term, 1902, Oct. 13, 1902.

(Extract from Minutes.)

WILLIAM A. WRIGHT, Comptroller General,
vs.
LOUISVILLE & NASHVILLE RAILROAD CO. ET AL. } No. 1156.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of Georgia, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said circuit court in this cause, be and the same is hereby affirmed.

It is further ordered, adjudged and decreed that the appellant, William A. Wright, and the surety on the appeal bond herein, Philip Cook, be condemned to pay the costs of this cause in this court, for which execution may be issued out of said circuit court.

Oct. 13th, 1902.

38 Original filed 13 day of Octo., 1902.

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals.

United States Circuit Court of Appeals, Fifth Circuit, October Term, 1902.

WILLIAM A. WRIGHT, Comptroller General, Appellant,
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY, Appellees. } No. 1156.

Appeal from the United States circuit court, northern district of Georgia.

Before Pardee, McCormick, and Shelby, circuit judges.

By the COURT: The decree of the circuit court is affirmed.

39 United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H Lednum, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 39 pages, numbered from *a* to 38 inclusive, contain a true copy of the record and all proceedings had, including the opinion of the court, in the case of—

WILLIAM A. WRIGHT, Comptroller General,
versus
LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL. } No. 1156.

as the same remains upon the files and records of said United States circuit court of appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, Louisiana, this 29th day of January, A. D. 1903.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

40 In the Circuit Court of Appeals for Fifth Circuit.

WILLIAM A. WRIGHT, Comptroller General, Appellant,
vs.
LOUISVILLE & NASHVILLE RAILROAD Co. and ATLANTIC Coast Line Railroad Company, Appellees. } Appeal.

Whereas a certified transcript of the record and all proceedings in the above stated case had in the United States circuit court of appeals for the fifth circuit, was duly filed in the Supreme Court of the United States, accompanying a petition for writ of certiorari

presented by William A. Wright, comptroller general, in said cause, and is now of file in that court;

And whereas the said writ was on the 24th day of March, 1903, granted, commanding the judges of the said circuit court of appeals to send without delay to the Supreme Court the record and proceedings in said cause for review and determination:

Now, therefore, it is hereby stipulated by the parties to said cause, acting through their solicitors of record, that the said certified transcript of the record and proceedings in said cause, now of file in the Supreme Court, shall be taken as a return to the writ, and that this stipulation be filed with the clerk of the United States circuit court of appeals for the fifth circuit and a certified copy thereof be sent up by him with his return to the writ.

Ap'l 1, 1903.

JOS. B. & BRYAN CUMMING,
KING, SPALDING & LITTLE,
Solicitors for L. & N. Railroad Co. and Atlantic C. S. R. R'd Co.

BOYKIN WRIGHT,
JOHN C. HART,
Solicitors for Wm. A. Wright, Comptroller General of Georgia.

The foregoing has the following endorsements, to-wit:

No. 1156. In the United States circuit court of appeals for the fifth circuit. William A. Wright, comptroller general, appellant, *v.* Louisville & Nashville Railroad Co., *et al.* Stipulation *in re* return to writ of certiorari. Filed 3 day of April, 1903, Charles H. Lednum, clerk of the United States circuit court of appeals.

41 United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing is a true copy of the stipulation *in re* return to writ of certiorari, in the case of William A. Wright, comptroller-general, *vs.* Louisville & Nashville Railroad Co., *et al.*, No. 1156, as the same remains upon the files and records of said United States circuit court of appeals.

Seal United States Circuit Court of Appeals, Fifth Circuit.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, Louisiana, this 3rd day of April, A. D. 1903.

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

42 UNITED STATES OF AMERICA, *ss*:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the fifth circuit, Greeting:

Being informed that there is now pending before you a suit in which William A. Wright, comptroller general, is appellant, and The Louisville & Nashville Railroad Company and The Atlantic Coast Line Railroad Company are appellees which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the northern district of Georgia, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme
43 Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 24th day of March, in the year of our Lord one thousand nine hundred and three.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

44 [Endorsed:] File No. 18,864. Supreme Court of the United States. No. 636, October term, 1902. William A. Wright, comptroller general, *vs.* The Louisville & Nashville R. R. Co., *et al.* Writ of certiorari.

In the United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, clerk of said court, do hereby certify that I received the within writ on the 3rd day of April, A. D. 1903, and, whereas, the attorneys for the parties therein named have, by a stipulation in writing filed in my office on this day, agreed: "That the said certified transcript of the record and proceedings in said cause, now of file in the supreme court, shall be taken as a return to the writ, and that this stipulation be filed with the clerk of the United States circuit court of appeals for the fifth circuit and a certified copy thereof be sent up by him with his return to the writ." Therefore, in compliance with said writ, and by direction of the judges of this court, I have made and attached hereto a certified copy of said stipulation as a return to the within writ.

Witness my official signature amd the seal of said court, this the 3rd day of April, A. D. 1903.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM, *Clerk.*

45 [Endorsed:] File No. 18,864. Supreme Court U. S., October term, 1903. Term No. 234. Wm. A. Wright, compt'r general, petitioner, *vs.* The Louisville & Nashville R. R. Co. Writ of certiorari & return. Filed April 8", 1903.